



STATE OF WASHINGTON  
WASHINGTON STATE BOARD OF HEALTH  
*1102 SE Quince Street • PO Box 47990  
Olympia, Washington 98504-7990*

June 10, 2004

The Honorable Dave Upthegrove  
Washington House of Representatives  
Post Office Box 40600  
Olympia, Washington 98504-0600

Dear Representative Upthegrove:

I am writing as chair of the Washington State Board of Health in response to your letter of May 10, 2004 concerning revisions to the Board's onsite wastewater rules.

We on the Board appreciate the attention you have given to this rule revision process. We share your interest in providing the highest possible level of protection to the waters of Washington State and we recognize that failing or improperly maintained or operated small on-site septic systems are one of many contributors to the degradation of marine waters and shellfish beds.

With regard to the question of nitrogen loading in the Hood Canal, I have a different understanding of the findings in the Puget Sound Action Team (PSAT). Traditional gravity-fed septic systems do not reduce nitrogen, even when properly operated and regularly maintained. The PSAT found that the combined educated guess of experts was that *all* septic systems, regardless of maintenance levels, contributed to half the nitrogen loading. There is no definitive evidence that better operation and maintenance of existing septic systems would significantly reduce nitrogen loading or improved dissolved oxygen levels in the Hood Canal.

You also request that Board rules guarantee environmental protections as well as public health protections. The Board's authority comes from RCW 43.20.050(2), which states: "In order to protect public health, the state board of health shall...[a]dopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities."

In 1971, the Legislature passed the Shoreline Management Act, chapter 90.58 RCW, which lays out a specific regulatory framework for addressing adverse effects to "the waters of the state and their aquatic life." The SMA charges local government with developing management plans. Such plans should include septic regulations to reduce water pollution such as nitrogen where needed [WAC 173.26.241]. The Department of Ecology is the lead state agency and must review all plans. The Board is currently reviewing its authority, but its actions may be constrained by the wording of its authorizing statute or the by the later and more specific construction of the SMA.

The Board is actively engaged with its various partners—including counties, local health jurisdictions, PSAT, the Governor's Office, the departments of Ecology and Health, and industry—in exploring all legal and policy options. This exploration will include a careful look at different regulatory approaches based on the relative risks posed by septic systems in specific areas. We are also looking at whether legislative changes are needed.

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As you know, on-site operation and maintenance is a complicated policy issue that has been extensively debated. Many regulatory approaches that look promising on paper have turned out to be ineffective given current fiscal, political, legal, and technological constraints. Nevertheless, the Board believes that additional collaborative and creative discussions are likely to result in credible, workable ideas about ways to strengthen the proposed rule. The Board is therefore very supportive of continued work and will keep your thoughtful comments in mind.

Thank you again for your interest in the Board's work and for the concern you have shown for the health of Washington State—its people and its natural resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lake", written in a cursive style.

Linda Lake, Chair

Washington State Board of Health

cc: Mary Selecky, Department of Health  
Steve Meyer, Department of Health  
Brad Ack, Puget Sound Action Team  
Ron Shultz, Office of the Governor  
Dave Peeler, Department of Ecology  
Washington State Board of Health Members